



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/151289

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on September 19, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the IRIS agency properly denied the Petitioner's request for daily living skills training sessions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Jill Spear

Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. The Petitioner is enrolled in the IRIS program. Petitioner's primary diagnoses include autism, cerebral palsy, epilepsy cardiac disorders and disruptive behavior disorder. He is currently unable to effectively communicate.
3. On June 25, 2013, the Petitioner submitted an Additional Consideration Process Form to the agency requested daily living skills training sessions 2x/week. The provider of the skills training is a specialist in speech language therapy for individuals with autism. She is not licensed and she is not a Medicaid certified provider. The services are requested to encourage speech/communication skills for the Petitioner.
4. On July 29, 2013, the agency issued a Notice of Action denying the Petitioner's request on the grounds that the services requested are covered services in the MA program.
5. On August 12, 2013, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. Id., §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." Id. §441.468.

The Medicaid Waivers Manual outlines general limitations on the program in Section 4.06:

B. With the exception of care management/support and service coordination, the participant service plan must utilize services covered by the Medicaid State plan (Medicaid card services) to the fullest possible extent before using waiver funds for any service that is waiver allowable. . .

C. For services or items covered by the Medicaid state plan, a Medicaid denial is required before waiver funds may be used. Acceptable documentation of a Medicaid denial may include:

- A copy of the denial letter or a case note indicating the CM/SSC had reviewed a copy of the Medicaid denial; or
- A case note indicating the CM/SSC had reviewed the Medicaid durable medical equipment, medical supply or other Medicaid covered service listing and found the item or service listed as "not covered."

Note: A vendor refusal to bill Medicaid or a refusal to accept Medicaid reimbursement is not a Medicaid denial.

In this case, the agency testified that it reviewed the Petitioner's request and determined that the services do not meet the definition of "daily living skills training." It is the agency's position that the services

should be requested as “counseling and therapeutic services.” The agency noted that because “counseling and therapeutic services” are potentially MA card services, the waiver would require the Petitioner to request services through MA first. If MA denies a service, the IRIS program can then consider it as part of the Petitioner’s IRIS plan. IRIS does not cover costs that are covered by health insurance, including MA.

Based on the information regarding the services in the Petitioner’s request, I agree with the agency that the services requested do not meet the definition of “daily living skills training” as defined in the IRIS policy manual and that the services more appropriately fit the definition of “counseling and therapeutic services.” The “daily living skills” definition contemplates specific training to develop personal hygiene skills, food preparation skills, housekeeping skills, money management skills, community mobility skills and parent skills. While better communication skills will be helpful in daily living, therapy to improve language and communication is not specific training to develop the skills contemplated in the definition as “daily living skills.”

The testimony at the hearing suggests that the services were not requested as “counseling and therapeutic services” because the provider is not an MA certified provider and will not be able to obtain certification because she is not licensed. Therefore, the provider cannot submit a claim to the MA program and cannot provide a denial of the service to the IRIS agency for consideration as part of the Petitioner’s IRIS plan. The Petitioner’s mother testified that this provider has proven to be successful in teaching communication skills to individuals with autism and she has provided some services to the Petitioner that have been effective. Therefore, the Petitioner’s mother wants the services to be provided by this specific provider.

I note that the definition of “counseling and therapeutic services” in the IRIS manual contains the following language:

Only competent and qualified providers may provide services to participants. Alternative therapies and treatments must be provided by licensed professionals who maintain current state licensure or certification in their field of practice.

If services are provided by trained technicians, therapy assistants or other specially trained persons who do not require state licensure or certification, the services need to be carefully considered in order that the treatment is not averse to the health and safety of the participant.

It appears that this may give the IRIS agency some authority to consider counseling and therapeutic services that are provided by persons who are not licensed or certified. However, this was not developed as an argument at the hearing and I do not have sufficient information about the provider and the services to determine whether the provider has sufficient qualification to provide treatment that is not averse to the health and safety of the participant. Again, I note that the services were not requested as “counseling and therapeutic services” and the agency’s denial was not based on that issue. The Petitioner’s request was made as “daily living skills training” and the scope of my decision-making authority is limited to whether this was a proper denial by the agency. I conclude that it was proper to deny the requested services as “daily living skills training.” This does not preclude the Petitioner from submitting a request for “counseling and therapeutic services” and getting a decision from the agency specific to that request.

The Petitioner also raised the issue of whether the IRIS agency could consider this service as a “customized good or service.” The agency indicated that it would likely have still denied the request because it would still consider the requested services to be MA card services and would need an MA denial to consider it for the Petitioner’s IRIS plan. Again, because the services were not specifically requested as a customized good or service and the denial by the agency was not based on a request for

customized services, it is outside the scope of this appeal. This does not preclude the Petitioner from submitting such a request to the agency.

CONCLUSIONS OF LAW

The agency denial of the requested services as “daily living skills training” was proper.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

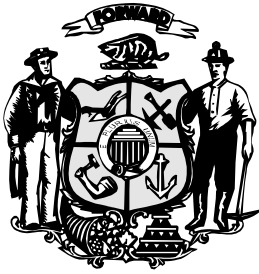
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of November, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 5, 2013.

Bureau of Long-Term Support